



3-1

**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

*Promoting the wise use of land
Helping build great communities*

PLANNING COMMISSION

MEETING DATE December 8, 2005	CONTACT/PHONE Chuck Stevenson 805-781-5197	APPLICANT William G. Kengle	FILE NO. TRACT 2299 S980005T
SUBJECT Proposal by WILLIAM G. KENGLE for reconsideration of the Planning Commission's decision approving Vesting Tentative Tract Map 2299 including allowing a retaining wall / fence height of one foot for Lot 11, two feet for Lot 12 and three feet for Lot 13. The applicant requests approval of a four-foot tall concrete retaining wall along the rear of Lots 11, 12 and 13, with a six-foot tall wooden fence on top of the concrete wall. The applicant has already constructed the subject wall and wood fence in excess of that approved by the Planning Commission on July 8, 2004, and is seeking approval of the wall as it exists now.			
RECOMMENDED ACTION Approval with modifications from the proposed plans based on the findings listed in Exhibit A and the conditions listed in Exhibit B			
ENVIRONMENTAL DETERMINATION The project was found to be consistent with the previously adopted Negative Declaration prepared for Tract 2299 (ED98-110, dated August 20, 1999)			
LAND USE CATEGORY Residential Single Family	COMBINING DESIGNATION None	ASSESSOR PARCEL NUMBER 092-130-002	SUPERVISOR DISTRICT 4
PLANNING AREA STANDARDS: None applicable			
EXISTING USES: Tract improvements are completed and construction of homes has commenced. Lot 11 and 13 are presently vacant, Lot 12 has a completed residence that is not yet occupied.			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Residential Single Family/ Residences <i>East:</i> Residential Single Family/ Residences <i>South:</i> Residential Single Family/ Residences <i>West:</i> Residential Single Family/ Residences			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242			

OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was previously referred to: NCAC, Public Works	
TOPOGRAPHY: Lots 11, 12, and 13 have steeply sloping rear yard areas down to the retaining wall.	VEGETATION: None at this time
PROPOSED SERVICES: Water supply: Community Water Sewage Disposal: Community Sewer Fire Protection: CDF	ACCEPTANCE DATE: October 24, 2005

PROJECT HISTORY

Tract 2299 was approved by the Planning Commission on September 9, 1999. The approval was for the subdivision of a 3.3 acre parcel into 16 parcels ranging in size from 6,049 to 11,371 square feet. The approval included 2:1 vegetated slopes along the southerly property line with no retaining wall proposed.

Public improvement plans were submitted in the spring of 2003 showing fill being placed on the southerly parcels with a six-foot retaining wall and a six-foot wooden fence on top of the retaining wall. Planning staff determined that this proposal was not in substantial conformance with the Planning Commission's original approval of the tract map. The applicant was advised to submit a reconsideration of the tract map in order for both the Planning Commission and Nipomo Community Advisory Council to determine whether the proposal was acceptable.

The applicant submitted the reconsideration application in April 2004. In May 2004, prior to Planning Commission's reconsideration, staff allowed the applicant to pour footings and a maximum one-foot high retaining wall with the assumption that some sort of retaining wall would be necessary due to the steepness of the slope on the project site and due to heavy rains causing erosion on adjoining properties to the south. The applicant proceeded to place concrete forms and steel reinforcement bars that would support a four-foot high retaining wall along the southerly property line with the understanding that removal of the forms and steel may be necessary if the Planning Commission were to deny the requested height.

At the time of the first reconsideration on July 8, 2004, letters from neighboring property owners raised several issues including erosion problems, loss of privacy due to overlook from enlarged rear yard areas located closer to the property line, and the tall height of the proposed wall and fence. Several potential options for dealing with these issues were included in the letters that generally supported the idea of some retaining wall to solve the problems caused by the grading.

At the hearing on July 8, 2004, the Planning Commission heard the request for reconsideration. The Commission's action was to partially approve the request and specified the following allowable wall and fence heights:

Construction of a retaining wall, with a 6 foot, 6 inch fence above the wall, along the southerly property line of Tract 2299 as follows:

- a. One foot along Lot 11 (7'-6" total combined height)
- b. Two feet along Lot 12 (8'-6" total combined height)
- c. Three feet along Lot 13 (9'-6" total combined height)
- d. Four feet along Lots 14-16 (10'-6" total combined height)

Since that time, Mr. Kengel has poured a continuous four-foot high concrete retaining wall along Lots, 11, 12 and 13 in contradiction to the Commission's previous direction. Mr. Kengel has stated that the reason for the taller retaining wall was to enlarge the useable rear yard areas of these lots. On top of the wall Mr. Kengel constructed a 6'-0" high wooden fence. The combined height of wall and fence is approximately ten feet high.

MAJOR ISSUES

The major issue with this, and other, tall retaining walls and fences in residential subdivisions is that their combined height creates an imposing structure that can create a fort-like appearance, can be a visual eyesore for residents on the site, and from surrounding properties and public places. In many instances, tall walls between homes can block natural sunlight to adjoining

homes during certain times of year. Tall retaining walls and fences in residential subdivisions can be avoided by careful use of alternative designs. Terracing of slopes with more than one wall is one such option. In this case, the wall and fence result in a 10 foot vertical "structure" which exceeds the ordinance limitation for fences on property lines of 6'6". In addition, the fence would be highly visible from Orchard Road from the west, an arterial road with high levels of traffic.

PROJECT ANALYSIS

ORDINANCE COMPLIANCE:

Under usual conditions, the allowable fence height on interior and rear property lines is 6'-6". In situations where adjoining parcels have different finish grades, a fence height of 6'-6" can be measured at the finish grade of the higher parcel. The existing fence and wall combination exceeds the allowable maximum height of 6'-6" because the applicant wished to create larger rear yard areas for his lots. This then necessitated a retaining wall and fence above. At the first reconsideration of this Tract, the Planning Commission approved a retaining wall for this location but at a reduced height of 1 foot for Lot 11, 2 feet for Lot 12 and 3 feet for Lot 13.

PLANNING AREA STANDARDS:

No Planning Area Standards that apply to this request for reconsideration.

STAFF COMMENTS:

Allowing the four-foot high retaining wall to remain along the southerly property lines of Lot 11, 12, and 13 would result in a continuous wall and fence height. To some, this configuration may be more visually appealing than a stepped fence with descending heights. The neighbors to the south are currently satisfied with the fence and wall (color coat on wall yet to be completed) and the height of 10 feet. In addition, the four-foot retaining wall allows an increased useable rear yard area for residents of Lots 11, 12, and 13 in Tract 2299. Based on an approval of the requested four foot high wall, the applicant will derive added value to Lots 11, 12, and 13 by being able to increase their useable rear yard area.

The issue of increased visual impact from the public street could be reduced with installation of landscaping trained to climb and eventually cover the wood fence. At least one of the neighbors agrees with this idea. A recommended condition to meet this concern is included in the conditions. With a landscaped fence, the public visual impacts of the wall as viewed from Orchard Road are lessened and provide consistency with the previously adopted environmental document for this project

COMMUNITY ADVISORY GROUP COMMENTS:

The Nipomo Community Advisory Committee considered this request prior to the previous reconsideration hearing and voted to limit the overall height of wall and fence to a 6'-6". They have previously expressed concerns about tall walls and fences around homes that they take block views, take away from the rural character of Nipomo, and are unsightly. They have not reviewed the latest request for reconsideration since the essential facts of the matter have not changed.

AGENCY REVIEW:

Public Works – Will review and approve plans based on Planning Commission decision
Environmental Health – No concerns.
APCD – No comments received.

3-4

Planning Commission
Tract 2299 Reconsideration/ Kengel
Page 4

CDF – No comments received.

LEGAL LOT STATUS:
Tract 2299 was legally created by a recorded map.

Staff report prepared by Chuck Stevenson

Attachments:

Photos of the wall and fence
Site map and cross section showing location of retaining wall in question
Letter submitted with application from Bill Kengel
Copy of previous Planning Commission Reconsideration

FINDINGS - EXHIBIT A

Environmental Determination

- A. That the Planning Commission considered and relied on the previously adopted Negative Declaration which is adequate for the purposes of compliance with CEQA because no substantial change are proposed in the project which will require major revision of the previous Negative Declaration, and no new information of substantial importance has been identified which was not known at the time that the previous Negative Declaration was adopted.

Tentative map

- B. The proposed reconsideration of Tract 2299 is consistent with applicable county general and specific plans because it complies with applicable area plan standards.
- C. As conditioned, the proposed reconsideration of Tract 2299 is consistent with the county zoning and subdivision ordinances.
- D. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitat because the project is located in an urban area which does not contain significant fish or wildlife habitat.
- E. The design of the subdivision or the type of improvement will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

EXHIBIT B - CONDITIONS OF APPROVAL

Approved Development

1. This approval authorizes: Construction of a four-foot high concrete retaining wall with a 6 foot high wood fence located directly above the wall along the south property line of Lots 11, 12, and 13, Tract 2299.

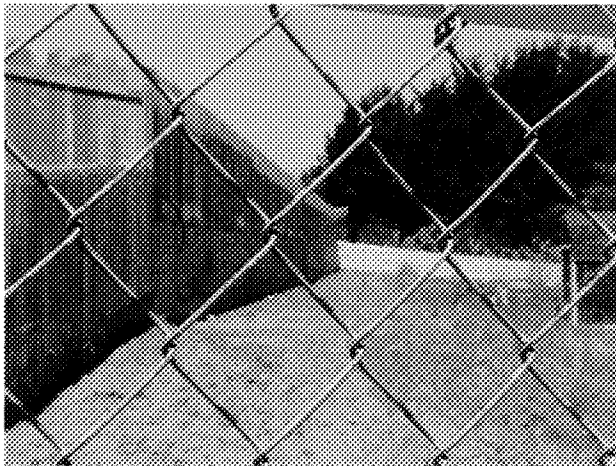
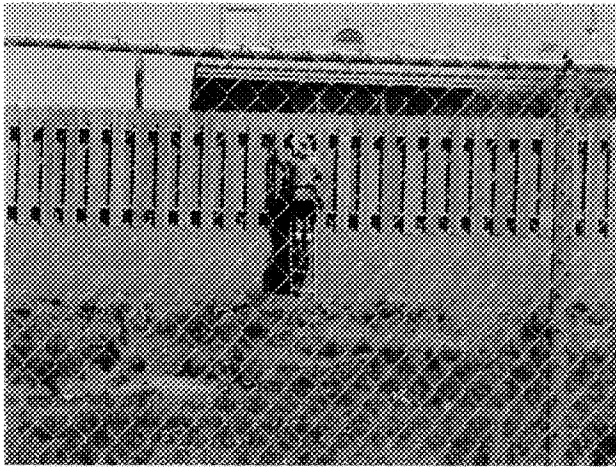
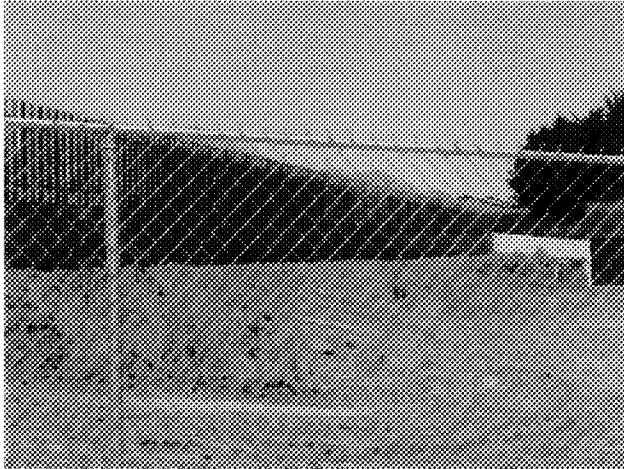
Conditions

2. Submit a construction permit application together with engineered construction plans for the concrete retaining wall (with surcharge) along Lots 11, 12, and 13, Tract 2299.
3. Provide elevation view plans of the retaining wall showing type and finish of wall coating, and type and design of wood fencing consistent with approved plans,
4. Submit a landscaping plan showing a climbing vine material to eventually cover the fence on top of the retaining wall along Lots 11 through 16, and trees located at 20 foot intervals along the northerly side of the rear property lines of Lots 11 through 16, Tract 2299. Landscaping plans shall also include detailed irrigation plans showing method and location of all irrigation lines and controllers. Work with the property owners of the lots adjoining Lots 11 through 16 on the south to arrive at an acceptable plant material selection for the fence and trees.

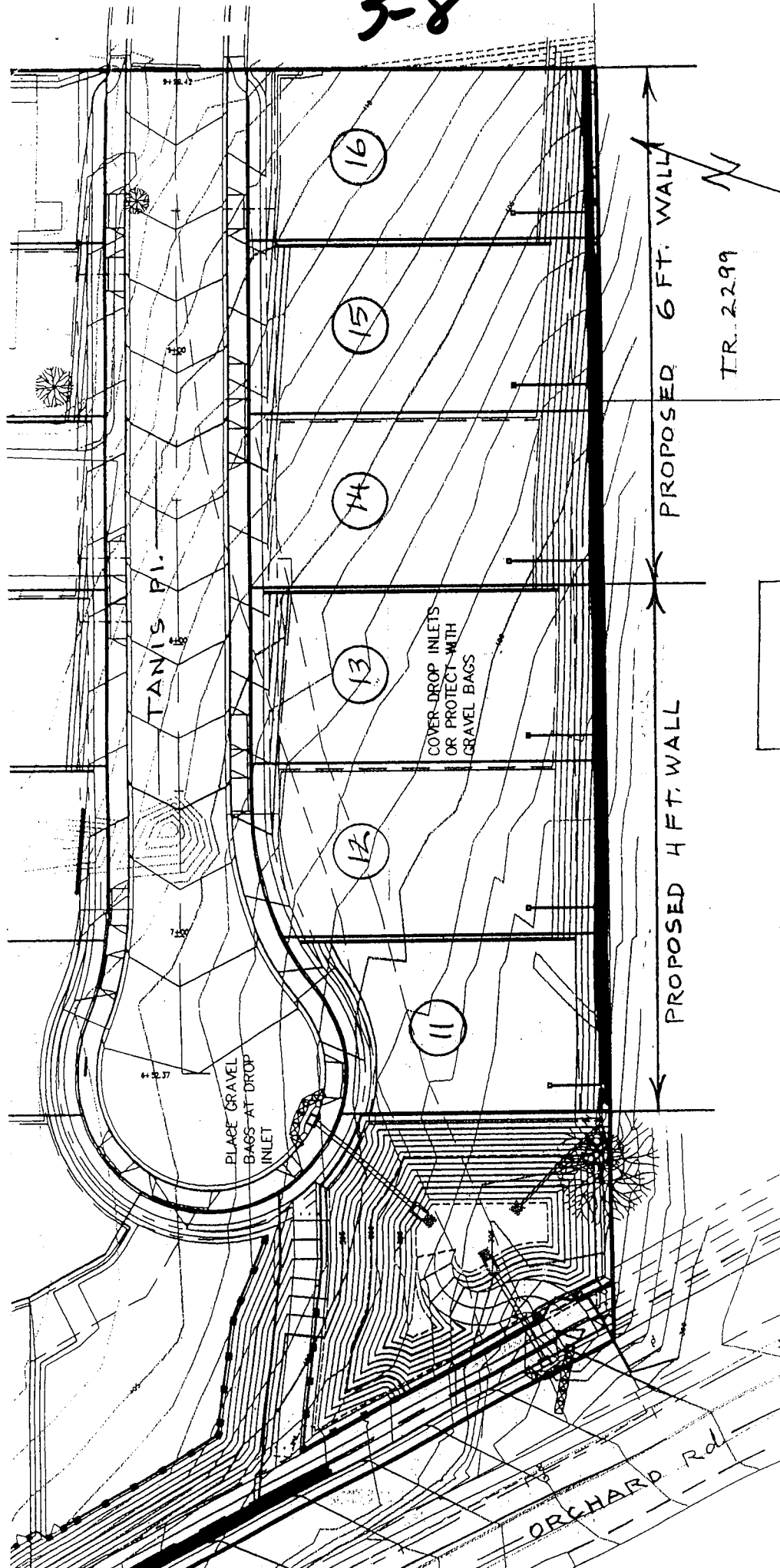
Conditions to be completed prior to occupancy or final building inspection /establishment of the use

5. Landscaping in accordance with the approved landscaping plan shall be installed or bonded for before ***final building inspection / establishment of the use***. If bonded for, landscaping shall be installed within 60 days after final building inspection. All landscaping shall be maintained in a viable condition in perpetuity.
6. **Prior to final building inspection, associated with this approval**, the applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.
7. All conditions of this approval shall be strictly adhered to, within the time frames specified, and in an on-going manner for the life of the project. Failure to comply with these conditions of approval may result in an immediate enforcement action by the Department of Planning and Building.

3-7



3-8

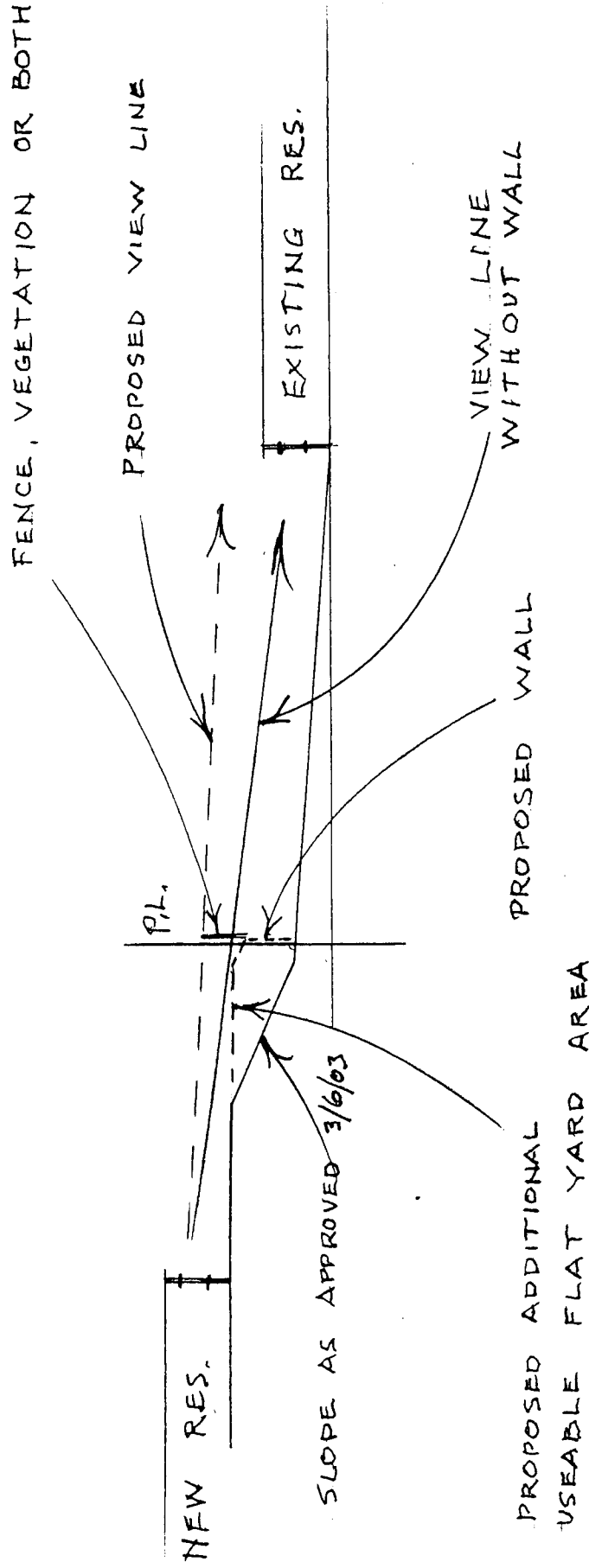


SCHEMATIC SHOWING LOCATION OF
SOUTH PROPERTY LINE RETAINING
WALLS PROPOSED ON 5/14/03.

CASE Res.

CUMMINGS Res.

— THEODORA —



SCHEMATIC SHOWING REASON FOR
SOUTH PROPERTY LINE RETAINING WALL

TR. 2299

3-10

William G. Kengel
Teddy Bear Homes
P. O. Box 267
Avila Beach, CA 93424

542-6032 pager
627-1438 office

San Luis Obispo County Planning Commission
County Government Center
San Luis Obispo, CA 93401

On 5/3/03 I applied for permit # 2002-29047 for a graduated four to six foot high concrete retaining wall to be constructed on the southerly property line of my property, vesting tentative Tr. 2299 of Nipomo. On or about that time I had both access agreements and letters of request for same from abutting property owners Lowell & May Cummings (easterly) and Lonnie & Gerry Case (westerly). Their utmost desire was to maintain privacy from new owners of my topographically higher lots (lots 11- 16 of Tr. 2299), and also to help control possible erosion problems. The wall, as designed, would nearly double the usable flat rear yard area for new owners of lots 11 - 16 in my Tr. 2299.

After my permit application was turned down, a requested letter from Warren Hoag indicated that if I wanted the retaining wall approved, I must return to the Planning Commission for a general reconsideration of Tr. 2299 since the referenced retaining wall was not shown on the plans originally presented.

2005 OCT 25 PM 3:25

SAN LUIS OBISPO COUNTY
PLANNING/BUILDING
DEPT

3-11

A note here on the timeline:

- a) Vested 8/12/98
- b) Approved 9/9/99
- c) Improvement plans signed 3/6/03
- d) Planning Commission "reconsideration" hearing 7/8/04
- e) Public Works "notice of expired right" 4/27/05
- f) Requested "negotiated agreement" with Case 5/6/05
- g) Work completed as per above agreement during approximately 2 -3 weeks following.

I am including with this letter only two items of "back-up" data which I believe are most important. The first, a letter from the N.C.A.C. indicating they "never opposed a retaining wall at this location". The second, a copy of the "negotiated agreement" with Lonnie & Gerry Case in which they request a four foot high retaining wall with a six foot fence abutting my lots 11, 12 & 13 to be completed within 30 days. I will note here the above is nearly a carbon copy of their written request of nearly 2 years ago already on file with County records. During "re-negotiations" Mr. Case vowed to build a wall of similar dimensions on his side of the property line, if my construction was not promptly completed.

My contention, conclusion and request is as follows:

- 1) County is to abide by rules of procedure in effect on the vesting date of 8/12/98.
- 2) California Government Code sections 65940 through 65944 indicate it is the responsibility of government to inform the applicant by means of a detailed, current and publicly available list, the nature of those items that must appear on a tentative map up for approval. Our county list does not require retaining walls, sloped earth surfaces, or any other treatment to be shown at elevation changes. Furthermore, California Government Code precludes County from asking for additional data to be produced after the vesting date.
- 3) Both Title 19 and the Conditions of Approval for Tr. 2299 direct staff, not any legislative body to issue such permits as are necessary to complete construction work.
- 4) Title 22 precludes County from interfering with private agreements unless directives of agreements are specifically precluded by law or would create a condition hazardous to the public.
- 5) The California Supreme Court has steadfastly and continuously proclaimed that the doctrine of "right of discretion" gives legislative bodies the sole and limited authority to determine compliance with existing law.
- 6) Both Title 22 and appendix to Chapter 33 of the Uniform Building Code direct County to take particular precaution where the property line of a new development abuts that of an existing one in an effort to protect the welfare of existing property owners. I am including a schematic which shows at a glance how the wall benefits all affected property owners.

In conclusion, I state the following: Retaining walls are and should be defined by County as utilitarian devices, not landscaping features. Their use depends on natural topography, location of existing property lines, building location, points of access and erosion problems, to name a few. Their height and location should always be the business and responsibility of civil and structural engineers. If it appears the height and location of a retaining wall would be a public eyesore, it should be the business and responsibility of the landscape architect to add to the proposed wall such commonly used structural or vegetative screening devices as are necessary to give the final product a pleasing appearance.

Bearing the totality of the above letter in mind, I wish the S.L.O. Co. Planning Commission to reconsider their actions of 7/8/04 which allowed on Lots 11, 12 & 13 of Tr. 2299, a 1 ft., 2 ft., & 3 ft. retaining wall respectively, and instead allow the wall to remain as it has been constructed, four feet high on all three lots. Further, I request the irrigation and landscaping of same where it abuts private property on both sides to be at the sole discretion of the property owners affected.

Thank you very much for your time and research in this matter.

Yours truly,

William G. Kengel, Owner
Teddy Bear Homes

3-14



**COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT**

PLANNING COMMISSION

24

"Making a Difference"

MEETING DATE July 8, 2004	CONTACT/PHONE Stephanie Fuhs (805) 781-5721	APPLICANT Kengel	FILE NO. TRACT 2299 S980005T
SUBJECT Proposal by Bill Kengel/Westland Engineering to reconsider Vesting Tentative Tract Map 2299. The applicant is requesting construction of a six foot retaining wall with a six foot fence on top of the retaining wall along the southern property line. The tract was originally approved with 2:1 slopes down to the property line with no retaining wall. The project is located at 159 Orchard Road, approximately 300 feet east of Tefft Street in the community of Nipomo, in the South County (Inland) Planning Area.			
RECOMMENDED ACTION 1. Approval with modifications from the proposed plans.			
ENVIRONMENTAL DETERMINATION The project was found to be consistent with the previously adopted Negative Declaration prepared for Tract 2299 (ED98-110, dated August 20, 1999).			
LAND USE CATEGORY Residential Single Family	COMBINING DESIGNATION None	ASSESSOR PARCEL NUMBER 092,130,002	SUPERVISOR DISTRICT(S) ① ② ③ ④ ⑤ All
PLANNING AREA STANDARDS: None applicable			
EXISTING USES: Public improvements for the tract are currently under construction			
SURROUNDING LAND USE CATEGORIES AND USES: <i>North:</i> Residential Single Family/Residences <i>East:</i> Residential Single Family/Residences <i>South:</i> Residential Single Family/Residences <i>West:</i> Residential Single Family/Residences			
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: The project was referred to: Nipomo Community Advisory Council, Public Works, Environmental Health			
TOPOGRAPHY: Mostly level to steeply sloping		VEGETATION: Grasses, scattered shrubs	
PROPOSED SERVICES: Water supply: Community system Sewage Disposal: Community sewage disposal system Fire Protection: CDF		ACCEPTANCE DATE: June 7, 2004	
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242			

BACKGROUND

Tract 2299 was approved by the Planning Commission on September 9, 1999. The approval was for the subdivision of a 3.3 acre parcel into 16 parcels ranging in size from 6,049 to 11,371 square feet. The approval included 2:1 slopes on the southerly property line with no retaining wall proposed.

Public improvement plans were submitted in the spring of 2003 showing fill being placed on the southerly parcels with a six foot retaining wall and a six foot wooden fence on top of the retaining wall. Planning staff determined that this proposal was not in substantial conformance with the Planning Commission's original approval of the tract map (see attached correspondence from staff to the applicant). The applicant was advised to submit a reconsideration of the tract map in order for both the Planning Commission and Nipomo Community Advisory Council to determine whether the proposal was acceptable.

The applicant submitted the reconsideration application in April 2004. Referrals were sent to Public Works, Environmental Health, Air Pollution Control District, CDF and the Nipomo Community Advisory Council.

In May 2004, staff allowed the applicant to pour footings and a one-foot retaining wall with the assumption that some sort of retaining wall would be necessary due to the steepness of the slope on the project site. The applicant proceeded to place four foot rebar along the retaining wall with the understanding that removal could be necessary based on the Planning Commission's decision.

Letters from neighboring property owners raise several issues including erosion problems, loss of privacy from having the height of the parcels raised and height of the proposed wall. Several potential options for dealing with these issues are included in the correspondence.

MAJOR ISSUES

The major issue with the proposed wall and fence is the combined height of the proposed wall and fence and the visibility from Orchard Road.

STAFF COMMENTS:

The applicant's proposed wall and fence would result in a 12 foot vertical "structure" which would be highly visible from Orchard Road from the west, which is an arterial road with high levels of traffic. Staff would recommend that a stepped retaining wall be constructed along the southerly property line, from west to east, starting at one foot along Lot 11, two feet along Lot 12, three feet along Lot 13 and four feet along Lots 14-16. Fences on top of the retaining wall could be a maximum of six feet, six inches as allowed by the Land Use Ordinance. This would lessen the public visual impacts of the wall as viewed from Orchard Road and provide consistency with the previously adopted environmental document for this project.

COMMUNITY ADVISORY GROUP COMMENTS:

Council moved to reject current concept of retaining wall. Would like to see input from surrounding neighbors and also that any retaining wall built not exceed a maximum height of 4 feet with the total height of remaining fence not to exceed 6'6". The Council also encourages the use of decorative measures (block, etc) for this wall.

AGENCY REVIEW:

Public Works - Will review and approve plans based on Planning Commission decision
Environmental Health - No concerns
Air Pollution Control District - No comments received
CDF - No comments received

3-16

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FINDINGS - EXHIBIT A

- A. That the Planning Commission considered and relied on the previously adopted Negative Declaration which is adequate for the purposes of compliance with CEQA because no substantial changes are proposed in the project which will require major revision of the previous Negative Declaration, no substantial changes occur with respect to the circumstance under which the project is undertaken which will require major revision of the previous Negative Declaration, and no new information of substantial importance has been identified which was not known at the time that the previous Negative Declaration was adopted.

Tentative Map

- B. The proposed reconsideration of Tract 2299 is consistent with applicable county general and specific plans because it complies with applicable area plan standards.
- C. The proposed reconsideration of Tract 2299 is consistent with the county zoning and subdivision ordinances.
- D. The design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat because the project is located in an urban area which does not contain significant fish or wildlife habitat.
- E. The design of the subdivision or the type of improvement will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

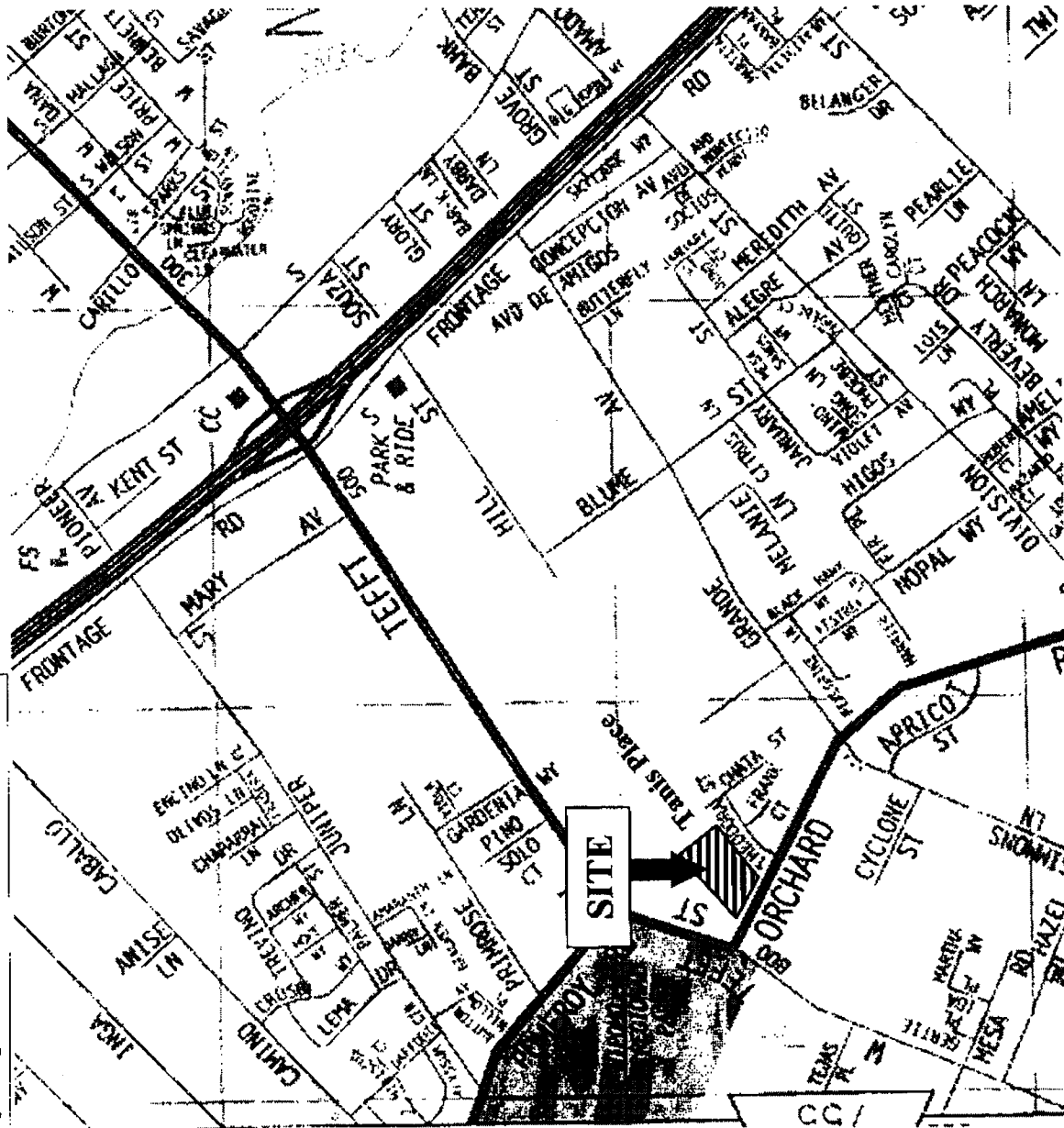
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CONDITIONS - EXHIBIT B

1. The approval authorizes:
Construction of a retaining wall, with a 6 foot, 6 inch fence above the wall, along the southerly property line of Tract 2299 as follows:
 - a. One foot along Lot 11,
 - b. Two feet along Lot 12,
 - c. Three feet along Lot 13,
 - d. Four feet along Lots 14 - 16.

Staff report prepared by Stephanie Fuhs
and reviewed by Warren Hoag, Principal Planner and Chuck Stevenson, Supervising Planner

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San Luis Obispo Department of Planning & Building

Exhibit

VICINITY MAP



Project

Dana Tract 2299 Reconsideration

3-19
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San Luis Obispo Department of Planning & Building

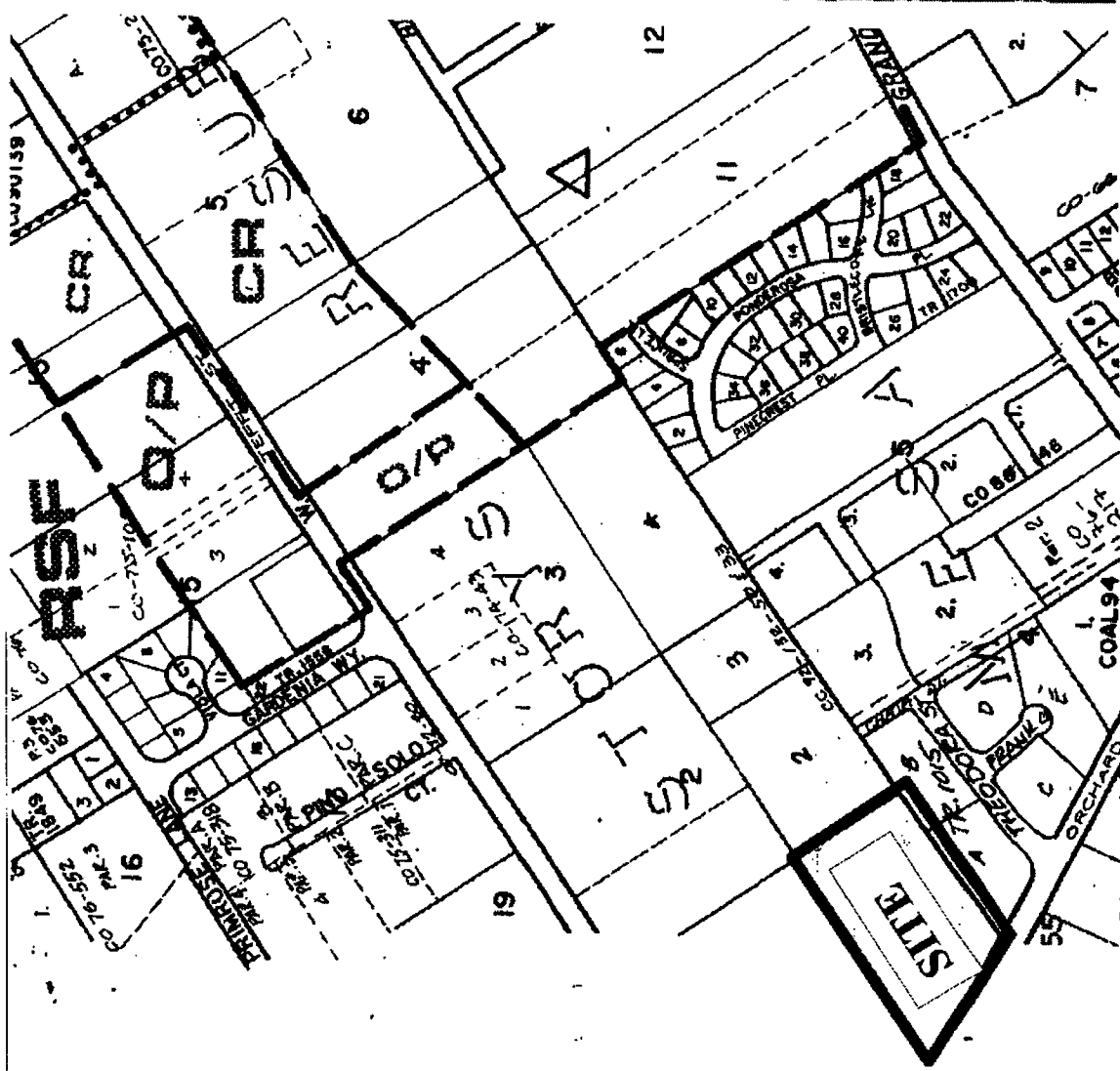
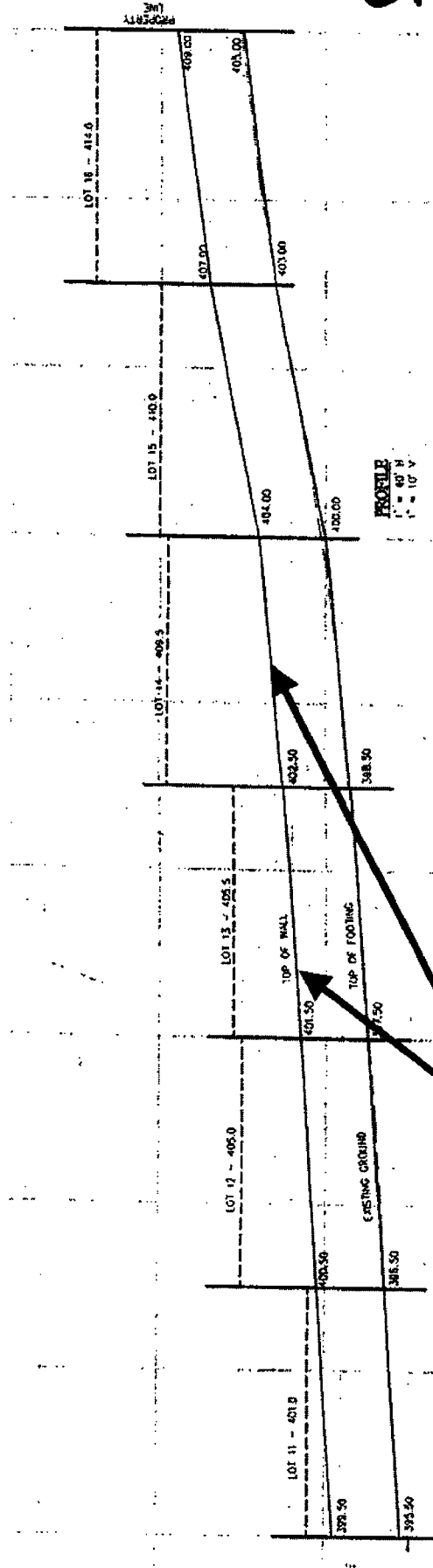


Exhibit
Land Use Category Map

Project
Dana Tract Map Reconsideration



Top of Wall without fencing

Project

Dana Tract Map 2299 Reconsideration



Exhibit

Proposed Wall Section

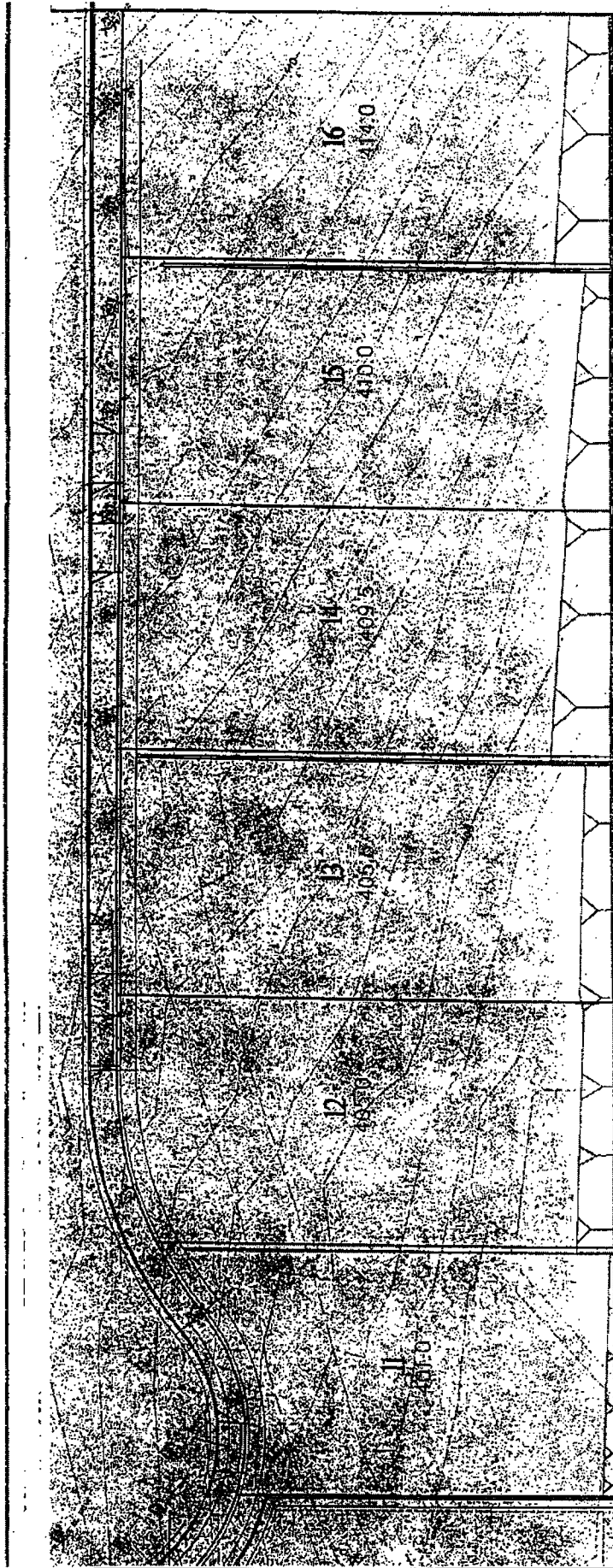


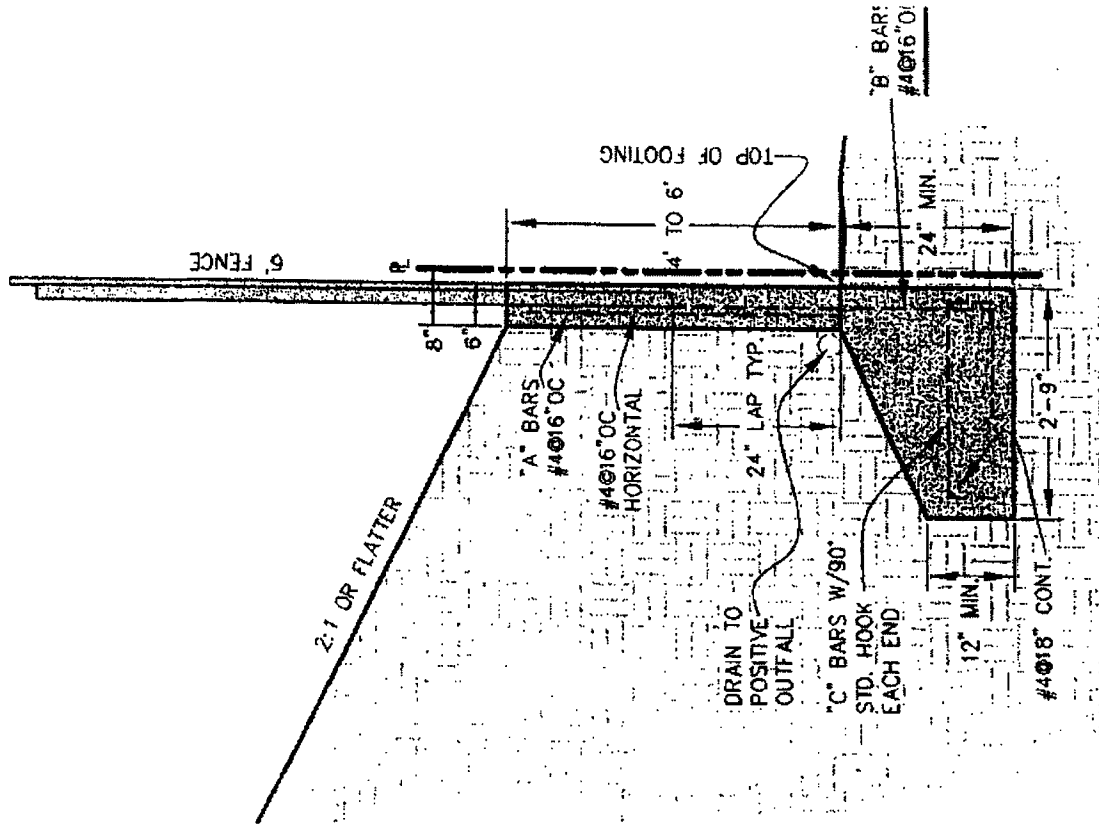
Exhibit
Proposed Grading Plan

Project
Dana Tract Map 2299 Reconsideration

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Exhibit

Proposed Fence Detail



Project

Dana Tract Map 2299 Reconsideration



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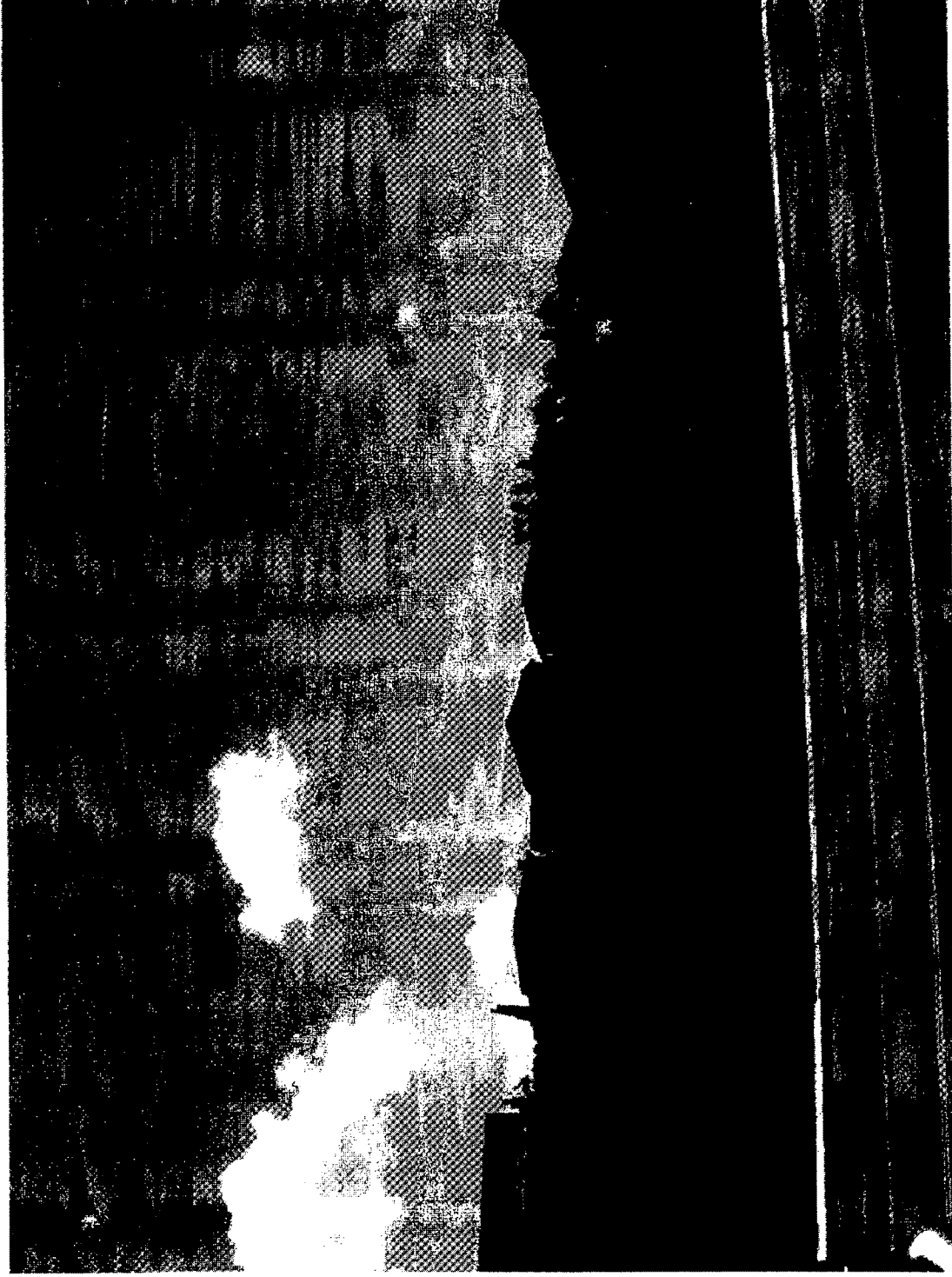
Exhibit

Tefft Street Development



Project

Dana Tract Map 2299 Reconsideration



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Exhibit

Tefft Street Development



Project

Dana Tract Map 2299 Reconsideration

3-25
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Exhibit

View of the Site from Orchard Road



Project

Dana Tract Map 2299 Reconsideration



3-26
2-13
SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

July 10, 2003

SENT BY FAX TO 805-773-0488

William G. Kengel
133 Castaic
Shell Beach, CA 93449

Dear Mr. Kengel:

Subject: Building Permit application #2002-29047 for a retaining wall at 159 Orchard Road, Nipomo

This is in response to your letter of June 2, 2003 regarding your building permit application for a retaining wall along the southern boundary of property at 159 Orchard Road. I informed you in a telephone conversation on May 29, 2003 that this permit could not be issued because it is not consistent with the project approved by the county Planning Commission on September 9, 1999 as Vesting Tentative Tract Map 2299.

The project reviewed and approved by the commission included a site map showing the proposed lots along the southern tract boundary to slope down to the property line with no retaining wall. The improvement plans approved for the tract by the county Department of Public Works also reflect a slope along the southern property line with no retaining wall. Consequently, I told you that, in order for the building permit for the retaining wall to be approved and the area behind it to be filled to the top of the wall, you must apply for a reconsideration of the tract map. This will provide the opportunity for the Planning Commission to specifically review that issue and decide whether to allow the project to revise its grading plan and incorporate the proposed retaining wall.

The basis for this decision includes the findings adopted by the Planning Commission for the approval of the tentative map for Tract 2299, county Land Use Ordinance (Title 22) section 22.01.070, Compliance with Standards Required, and county Real Property Division Ordinance (Title 21) section 21.04.040, Building and land use permits. Copies of these findings and ordinance sections are attached, with the pertinent sections marked.

You can proceed with the project without the retaining wall and additional grading to the top of the wall as approved by the Planning Commission and reflected by the approved improvement plans. Or, you can apply for reconsideration of the tentative map approval to eliminate the slope down to the southern property line and instead allow the retaining wall and the filling of the lots behind it to the top of the wall. Unless and until you receive approval of such a reconsideration,

3-27
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we will be unable to issue the building permit you filed for the retaining wall, based on the findings and ordinance sections cited above.

Please contact me if you have any further questions regarding this matter.

Sincerely,



Warren Hoag
Principal Planner
Inland Planning and Permitting

c: Supervisor Achadjian
Pat Beck
Kami Griffin
Richard Marshall

Kengel_tract 2299 wall.wpd

3-28
2-15
Lonnie & Gerry Case
880 Theodora
Nipomo, Ca. 93444

RECEIVED
JUL 14 2003
Planning & Bldg
July 7, 2003

929-1364-

Dear Mr. Hoag:

This letter is concerning the property we own at 880 Theodora, in Nipomo. Our northerly property line abuts property owned by William Kengel at 159 Orchard, in Nipomo. We understand that Mr. Kengel is subdividing his property and has a county approved plan that allows for lot elevations that are 6 to 10 feet higher on his side of our common property line, than on our side. We are concerned that the slope created on his side may erode away, causing flooding and mud damage on our side. We are also concerned that future property owners will be able to look directly down in our back yard. To alleviate these problems Mr. Kengel has agreed to build a 4' to 6' high retaining wall. We think that it's necessary to have a 6' wall on top of the retaining wall, for our privacy on our common property line.

Sincerely,

Lonnie & Gerry Case

3-29

RECEIVED

JUL 17 2003

Planning & Bldg

2-16

860 Theodora St.

Nipomo, Ca. 93444

July 15, 2003

Phone 929-4217

Re: Follow-up on request for retaining
wall between Tract 2299 and back
lot line at 870 Theodora in Nipomo

Dear Mr. Warren Hag:

Mr. Kengel believes he will
receive permission to build a cement
wall as above, but he says it may
take 3 to 6 months to get the permission.

In the meantime he will start his grading.
That means we may have an 8 to 10 foot
bluff on the 870 lot line making us

3-30

Page 2

217

1-16

vulnerable to mischief and runoff
and erosion in case of rain.

If the county planners speed up
the permit process to build the wall
we would appreciate it.

Very truly yours,

May L. Cummings

Lowell A. Cummings

3-31
2-18

Mr. L.M. Pratt
870 Theodora Street
Nipomo, CA 93444

3 July 2003

Mr. William Hoag
Planning and Building Department
County Government Center
San Luis Obispo, CA 93408

RECEIVED
JUL 7 2003
Planning & Bldg

SUBJECT: Tract # 2299

Dear Mr. Hoag,

We are writing to express our concerns about the development of tract 2299, in Nipomo by Mr. Bill Kengall of Teddy Bear Homes. We understand that his plans for development will be presented to the county planners sometime this month, and we would like to take this opportunity to submit our comments and concerns for the public record.

Our family property at 860/870 Theodora Street borders at the back along Mr. Kengalls property which is to be developed. Up until recently we had a line of trees along the back property line which afforded us privacy from his property. After several meetings with Mr. Kengall, we reluctantly agreed to allow him to remove these trees, as they did partially hang over to his side of the lot line. Prior to agreeing to this, Mr. Kengall assured us that he would not be building any two-story houses which would look down into our yard and house. What he deliberately failed to tell us up front, was that he intended to grade the property to raise the level of his lots by 8 to 10 feet! His reason for this grading is so that he can sell his houses as "view" houses toward the Santa Maria Valley to the south. Unfortunately, we now become a part of the "view" with all of the houses peering straight down into our backyard, living room and bedroom.

When Mr. Kengall described his plans to us, we had several heated discussions. His intent was to erect a standard six-foot fence on the property line, grade up to 10 feet high beyond the fence, and build his houses on top of the grade. We told him that this was an intolerable situation for us, especially after we had shown good will in allowing

3-32
2-19

Unfortunately, we heard this week, that for some incomprehensible reason his request to build the retaining wall had been turned down. We are at a loss as to understand why this would be so. In fact, with the instability of the soil here (soft sand) and the potential for damaging erosion and water run-off (onto our property), we would have thought that a retaining wall would be mandatory. In fact, the house recently built by another developer behind our property at 860 Theodora Street did put in a retaining wall, as this is the correct and proper thing to do.

Given the current situation, we see that there are three viable options which need to be considered for the development of Mr. Kengalls property. These are listed below, from the best solution to the worst:

1. Do not allow the tract 2299 property to be graded to these heights. Ideally, the property would remain at its current height, and the houses would be built at stepped levels to follow the natural gentle slope of the hill. This was how the houses along the other end of Tanis Street from where he is developing were built recently, and the effect is quite pleasant, with no unsightly views or privacy issues beyond a standard six-foot fence. If the sole reason for grading to these heights is to provide increased views for his houses, then this is not a good reason. It disrupts the natural flow of the hill from all sides, and presents a very ugly view for all of those around. For an example of how bad this looks, stand on Tefft Street and look at the 'Teddy Bear homes fronting Tefft Street. Our view would be equally as bad! Beyond the sheer ugliness, I also have grave concerns about soil erosion and water runoff. Even with the existing gentle slope of the property, we still experience quite a bit of runoff during good rain storms. Putting water runoff pipes along the property line will help to some degree, but as we all know, these pipes are not completely effective, and aide with water already saturated into the soil. They do nothing to help with surface runoff of already saturated soil. This is the best solution for us, but the worst for Mr. Kengall who would not get his artificially created "view" lots.
2. Allow Mr. Kengall to raise the height of his property, but install a retaining wall at the property line. Then erect the fences on top of the wall at the newly created property height. This solution will satisfy the issues of privacy, erosion and water runoff. Also, we can deal with my view with some creative landscaping along the wall. Mr. Kengall would get his "view" lots and full use of his property, and we would not suffer an unacceptable invasion of privacy.
3. Allow Mr. Kengall to raise the height of his property, but insist that his six-foot fence line be erected at the top of the grade, not at

3-33
~~2-20~~

the bottom as is currently planned. This does nothing to deal with concerns of erosion and water runoff and gives us a bad view, like that from Tefft Street. It does, however, give us a certain level of privacy. From Mr. Kengalls perspective, this solution effectively reduces the usable size of his lots, but on the other hand it gives him his desired "view".

What is not acceptable, at any level, is to allow Mr. Kengall to proceed with raising the height of his lots and creating a terrible situation for us as has been described above by only putting a fence line below at the bottom of the grade. If you look at how the Teddy Bear homes have been built, there are many instances where houses look directly down into the backyards and windows of the houses next to them. This is not a good situation for those of us who cherish our privacy. However, the main difference here, is that the people in those houses bought them while knowing what the view and privacy situation was. In our case, our property has been here for quite a long time, and it was purchased with an eye toward the privacy it enjoyed. To now have this potential situation imposed upon us, with its devastating lack of privacy and other environmental impacts, is intolerable. If the current plans are not modified to be more acceptable, then there is no doubt that it will have a direct impact on our property value, with a reduction in its potential market selling price. We would definitely have to pursue all legal options available to us in order to protect our property and its market value.

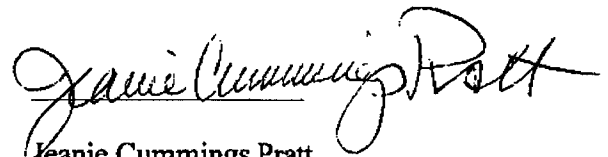
Of course these are not options we would wish to pursue, and therefore we hope that the Planning Commission will take a serious look at our concerns, which are not at all unreasonable. We are not against Mr. Kengall building his houses, he has a right to develop his property for profit. But his plans cannot, and should not, result in great detriment to already existing properties and longtime residential neighborhoods.

We thank you for your time and the opportunity to air our concerns via your offices. We look forward to hearing back from you on this matter.

Sincerely,



Lindsay M. Pratt



Jeanie Cummings Pratt

Cc: Mr. K.H. Achadjian – SLO County Board of Supervisors
Cc: Nipomo Community Advisory Council

3-34
2-2T

RECEIVED
JUL 7 2003
Planning & E

866 Theodore St.
Nipomo, Ca. 93444
July 2, 2003
Phone: 929-4217

Re: The need for a retaining wall
with a fence-on-top between Tract
2299 and the back lot line at 870
Theodore in Nipomo.

Dear Mr. Warren Hay,

Currently the land is the same
level between Tract 2299 and 870 Theodore.
Are you aware that Mr. Kengall plans to
raise the level of his Tract 8 to 10 feet at
our lot line? This leaves us facing an
8 to 10 foot bluff on our back lot line -
threatening rock-off, erosion and loss of
privacy in our back yard at 870.

Recently you turned down a retaining
wall. We want you to understand that it

3-35

Page 2 ~~2-22~~

a potentially dangerous situation with the regrading of the Tract.

If we and our children, the Pratts at 870, have to accept the 10 ft. bluff on our border please allow us to protect ourselves in some way - a 6-foot cement wall with a 6'6" fence on top.

Mr. Kingall has already provided 25 little-brush plants to soften the affect.

Again, we are the people most affected. Please reconsider your decision on the wall.

Very truly yours;

May L. Cummings

David A. Cummings

3-36
2-23

5-17
FOR OFFICIAL USE ONLY(WR)

**COUNTY OF SAN LUIS OBISPO
NOTICE OF DETERMINATION AND
NEGATIVE DECLARATION**

ENVIRONMENTAL DETERMINATION NO. ED98-110

DATE: August 20, 1999

PROJECT DESCRIPTION

APPLICANT/ENTITLEMENT: Dana Tract Map; Tract 2299; S980005T

PLANNING AREA: South County - Inland, Nipomo

LAND USE CATEGORY: Residential Single Family

PARCEL SIZE: 3.3 acres

LOCATION: 159 Orchard Road, approximately 100 feet south of West Tefft Street, in the community of Nipomo

PROPOSED USES/INTENT: A request to subdivide a 3.3 acre parcel into 16 parcels, ranging in size between 6,049 and 11,371 square feet each, for sale and/or development of each proposed parcel

APPLICANT: David Dana; Santa Maria, CA

ENVIRONMENTAL SETTING

TOPOGRAPHY:	Gently sloping
VEGETATION:	Scattered pine trees, grasses, forbs, scattered shrubs
SOIL TYPE:	Oceano sand
SOIL CHARACTERISTICS:	Well drained; low erodibility; low shrink-swell potential
GEOLOGIC HAZARDS:	Negligible landslide potential; low to moderate liquefaction potential
FIRE HAZARD:	Moderate
WATER:	Nipomo Community Services District
SEWAGE DISPOSAL:	Nipomo Community Services District
EXISTING USES:	Single family residence and barn
SURROUNDING USES:	Single-family residences, church

ADDITIONAL INFORMATION

Additional information pertaining to this environmental determination may be obtained by contacting the Environmental Coordinator, County Government Center, San Luis Obispo, CA 93408, (805) 781-5600.

STATEMENT OF FINDINGS

The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Negative Declaration (pursuant to Public Resources Code Sections 21108, 21151 & 21167) is proposed.

ACTION TAKEN

On _____, 19____, the San Luis Obispo Board of Supervisors/Planning Commission/Staff, having considered the Environmental Coordinator's action, approved/denied this project.

A copy of the Negative Declaration is available for review from the San Luis Obispo County Clerk, 1144 Monterey Street, Suite A, San Luis Obispo, CA 93408-2040.

3-37
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~~5-18~~

California Department of Fish and Game

CERTIFICATE OF FEE EXEMPTION

De Minimis Impact Finding

PROJECT TITLE & NUMBER: Dana Tract Map; Tract 2299; 9980005T

Project Applicant

Name:	<u>David Dana</u>
Address:	<u>Po Box 6417</u>
City, State, Zip Code:	<u>Santa Maria, CA. 93456</u>
Phone #:	<u>(805) 541-2394</u>

PROJECT DESCRIPTION/LOCATION: See attached Notice of Determination

FINDINGS OF EXEMPTION:

There is no evidence before this agency that the proposed project has the potential for adverse effect on wildlife resources for one or more of the following reason(s):

- ☒ The project is located in an urbanized area that does not contain substantial fish or wildlife resources or their habitat.
- ☐ The project is located in a highly disturbed area that does not contain substantial fish or wildlife resources or their habitat.
- ☐ The project is of a limited size and scope and is not located in close proximity to significant wildlife habitat.
- ☐ The applicable filing fees have/will be collected at the time of issuance of other County approvals for this project. Reference Document Name and No. _____
- ☐ Other: _____

CERTIFICATION:

I hereby certify that the lead agency has made the above findings of fact and that, based upon the initial study and the hearing record, the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

Ellen Carroll, Environmental Coordinator
County of San Luis Obispo

Date: _____

3-38
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5/19

**COUNTY OF SAN LUIS OBISPO
INITIAL STUDY SUMMARY - ENVIRONMENTAL CHECKLIST**

Project Title & Number Dave Tract Map; Tract 2299; S980005T

Project Environmental Analysis

The County's environmental review process incorporates all of the requirements for completing the Initial Study as required by the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The Initial Study includes staff's on-site inspection of the project site and surroundings and a detailed review of the information in the file for the project. In addition, available background information is reviewed for each project. Relevant information regarding soil types and characteristics, geologic information, significant vegetation and/or wildlife resources, water availability, wastewater disposal services, existing land uses, surrounding land use categories and other information relevant to the environmental review process are evaluated for each project. The Environmental Division uses the checklist to summarize the results of the research accomplished during the initial environmental review of the project. Persons, agencies or organizations interested in obtaining more information regarding the environmental review process for a project should contact the County of San Luis Obispo Environmental Division, Rm. 310, County Government Center, San Luis Obispo, CA 93408-2040 or call (805) 781-5600.

Initial Study Reference and Agency Contacts: The following reference materials are used in the environmental review for each project and are hereby incorporated by reference into the Initial Study.

- | | |
|---|---|
| • Project File for the Subject Application | • Archaeological Resources Map |
| • County General Plan (Inland & Coastal, including all maps & elements) | • Natural Resource Conservation Service; Soil Survey for SLO County |
| • County Land Use Ordinance | • Flood Hazard Maps |
| • Area of Critical Concerns Map | • Airport Land Use Plans |
| • Fire Hazard Severity Map | • Other special studies, reports and existing EIRs as appropriate |
| • Natural Species Diversity Database | |
| • Areas of Special Biological Importance Map | |

In addition to the above, the County Planning or Environmental Division has contacted responsible and trustee agencies for their comments on the proposed project. With respect to the subject application, the following agencies have been contacted (marked with an "X") or have responded (marked with "XX"):

- | | |
|--|---|
| <input checked="" type="checkbox"/> County Engineering Department | <input type="checkbox"/> CA Department of Fish and Game |
| <input checked="" type="checkbox"/> County Environmental Health Division | <input checked="" type="checkbox"/> CA Department of Forestry |
| <input type="checkbox"/> County Planning Division | <input type="checkbox"/> CA Department of Transportation |
| <input type="checkbox"/> County Agricultural Commissioner's Office | <input type="checkbox"/> Regional Water Quality Control Board |
| <input type="checkbox"/> County Airport Manager | <input type="checkbox"/> CA Coastal Commission |
| <input type="checkbox"/> Airport Land Use Commission | <input type="checkbox"/> _____ Community |
| <input checked="" type="checkbox"/> Air Pollution Control District | <input type="checkbox"/> _____ Service District |
| <input type="checkbox"/> County Sheriff's Department | <input checked="" type="checkbox"/> Other <u>Parks and Recreation</u> |

Checklist Identification of Mitigations for Potential Impacts: The checklist provides the identification and summary of the project's potential environmental impacts. Where potential impacts require mitigation, the following list of mitigations explains how the identified potential environmental impacts can and will be avoided or substantially lessened:

3-39
2-26

520

- A. The project has been changed to avoid or substantially lessen environmental impacts. Where changes require explanation, the change(s) will be discussed in the Special Environmental Considerations section or attached material following the checklist.
- B. The project is subject to standards and requirements of the Land Use Element/Land Use Ordinance and/or other County ordinances that include provisions to avoid or substantially lessen environmental impacts. These provisions are requirements that must be incorporated into the project.
- C. The project is subject to state and/or federal regulations, laws and/or requirements that include provisions to avoid or substantially lessen environmental impacts. The project must incorporate the above provisions in order to be in compliance with federal or state law.
- D. A special mitigation plan to avoid or lessen environmental impacts has been agreed to by the applicant. This will be noted on the checklist and, if necessary, discussed in an attachment to the checklist.

COUNTY OF SAN LUIS OBISPO INITIAL STUDY CHECKLIST

1=Potentially Significant Impact
2=Impact Can & Will be Mitigated
3=Insignificant Impact
4=Not Applicable

I. BIOLOGICAL RESOURCES

- | | 1 | 2 | 3 | 4 |
|--|-----|-----|-----|-----|
| A. Wildlife | () | () | (X) | () |
| B. Vegetation | () | () | (X) | () |
| C. Habitat Area | () | () | (X) | () |
| D. Rare and/or Endangered Species | () | () | (X) | () |
| E. Unique or Fragile Biotic Community | () | () | (X) | () |
| F. State Area of Special Biological Importance | () | () | (X) | () |
| G. Riparian/Wetland Area | () | () | (X) | () |
| H. Other: _____ | () | () | () | () |

Mitigation: A ____ B ____ C ____ D ____

- () See attached exhibit(s): () Developer's Statement; () Agency Response _____
- () Revised Plans; () Designated Building Sites
- () See Special Environmental Considerations
- () See Document in file _____

II. DRAINAGE, EROSION AND SEDIMENTATION

- | | | | | |
|--|-----|-----|-----|-----|
| A. Increased Storm Water Runoff | () | () | () | () |
| B. Erodible Soils/Erosion | () | () | (X) | () |
| C. Poorly Drained Soils | () | () | (X) | () |
| D. Sedimentation | () | () | (X) | () |
| E. Contributes to Existing Drainage Problem | () | () | (X) | () |
| F. Alters Existing Drainage Course or Waterway | () | () | () | () |
| G. Other: _____ | () | () | () | () |

Mitigation: A ____ B ____ [see LUO sec.22.05.036 (CZLUO 23.05.036); 22.05.040 (CZLUO 23.05.040)]
C ____ D ____

- () See attached exhibit(s): () Developer's Statement; () Agency Response _____
- () Sedimentation & Erosion Control/Drainage Plan
- () See Special Environmental Considerations
- () See Document in file _____

3-40
227

5-21

1=Potentially Significant Impact
2=Impact Can & Will be Mitigated
3=Insignificant Impact
4=Not Applicable

III. GEOLOGICAL HAZARDS/SITE ALTERATION

- | | 1 | 2 | 3 | 4 |
|---|-----|-----|-----|-----|
| A. Landslide Hazard | () | () | () | (X) |
| B. Seismic Hazard | () | () | (X) | () |
| C. Topographic Alteration; Grading for
Building __, Driveways __, Roads __, Other __ | () | () | (X) | () |
| D. Soil Expansion | () | () | (X) | () |
| E. Steep Slopes | () | () | (X) | () |
| F. Other: _____ | () | () | () | () |

Mitigation: A __ B __ C __ D __

- () See attached exhibit(s): () Developer's Statement; () Agency Response _____
() Sed./Erosion Control Plan; () Revised Plans; () Designated Building Sites
() See Special Environmental Considerations
() See Document in file _____

IV. WATER RESOURCES

- | | | | | |
|------------------------------------|-----|-----|-----|-----|
| A. Groundwater Quantity | () | () | () | (X) |
| B. Groundwater Quality | () | () | (X) | () |
| C. Surface Water Quantity | () | () | () | (X) |
| D. Surface Water Quality | () | () | (X) | () |
| E. Stream Flow Change | () | () | () | (X) |
| F. Change to Estuarine Environment | () | () | () | (X) |
| G. Other: _____ | () | () | () | () |

Mitigation: A __ B __ C __ D __

- () See attached exhibit(s): () Developer's Statement; () Agency Response _____
() Hydrology Report
() See Special Environmental Considerations
() See Document in file _____

V. POLLUTION

- | | | | | |
|--|-----|-----|-----|-----|
| A. Hazardous Materials | () | () | () | (X) |
| B. Groundwater Pollution | () | () | (X) | () |
| C. Surface Water Pollution | () | () | (X) | () |
| *D. Increase in Existing Noise Levels | () | (X) | () | () |
| E. Exposure of People to Severe Noise Levels | () | () | (X) | () |
| F. Substantial Air Emissions | () | () | (X) | () |
| *G. Deterioration of Ambient Air Quality | () | (X) | () | () |
| H. Creation of Objectionable Odors | () | () | () | (X) |
| I. Other: _____ | () | () | () | () |

Mitigation: A __ B __ C __ D X

- () See attached exhibit(s): (X) Developer's Statement; () Agency Response _____
() Hydrology/Noise Study
() See Special Environmental Considerations
() See Document in file _____

3-41
2-28

1=Potentially Significant Impact
2=Impact Can & Will be Mitigated
3=Insignificant Impact
4=Not Applicable

VI. TRAFFIC

- | | 1 | 2 | 3 | 4 |
|--|-----|-----|-----|-----|
| A. Increase in Vehicle Trips | () | () | (X) | () |
| B. Reduced Levels of Service on Existing Public Roadways | () | () | (X) | () |
| C. Limited or Unsafe Access | () | () | (X) | () |
| D. Creates Unsafe Conditions on Public Roadways | () | () | (X) | () |
| E. Areawide Traffic Circulation | () | () | (X) | () |
| F. Internal Traffic Circulation | () | () | (X) | () |
| G. Other: _____ | () | () | () | () |

Mitigation: A ____ B ____ [see Co. Code Title 13.01.010-.060; _____ Circulation Fee]
C ____ D ____

- () See attached exhibit(s): () Developer's Statement; () Agency Response _____
() Traffic Study
() See Special Environmental Considerations
() See Document in file _____

VII. PUBLIC SERVICES

- | | | | | |
|------------------------------|-----|-----|-----|-----|
| *A. Fire Protection Services | () | (X) | () | () |
| B. Police/Sheriff Services | () | () | (X) | () |
| C. Schools | () | () | () | () |
| +D. Community Wastewater | () | (X) | () | () |
| *E. Community Water Supply | () | (X) | () | () |
| F. Solid Waste Disposal | () | () | (X) | () |
| G. On-site Wastewater | () | () | () | (X) |
| H. On-site Water | () | () | () | (X) |
| I. Other: _____ | () | () | () | () |

Mitigation: A ____ B ____ (School Fee, Countywide Fee) C ____ D X

- () See attached exhibit(s): (X) Developer's Statement; () Agency Response _____
() Hydrology Report
() See Special Environmental Considerations
() See Document in file _____

VIII. AESTHETIC/CULTURAL RESOURCES

- | | | | | |
|---------------------------------------|-----|-----|-----|-----|
| *A. Visual Impact from Public Roadway | () | (X) | () | () |
| B. Increased Light or Glare | () | () | (X) | () |
| C. Alters Important Scenic Vista | () | () | () | (X) |
| *D. Archaeological Resources | () | (X) | () | () |
| E. Historic Resources | () | () | (X) | () |
| F. Other: _____ | () | () | () | () |

Mitigation: A ____ B ____ C ____ D X

- () See attached exhibit(s): (X) Developer's Statement; () Agency Response _____
() Visual Analysis; () Revised Plans; () Landscape Plan; () Designated Building Sites
() See Special Environmental Considerations
() See Document in file _____

3-42
2-29

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1=Potentially Significant Impact
2=Impact Can & Will be Mitigated
3=Insignificant Impact
4=Not Applicable

IX. HOUSING AND ENERGY

- | | 1 | 2 | 3 | 4 |
|---|-----|-----|-----|-----|
| A. Creates Substantial Demand for Housing | () | () | (X) | () |
| B. Uses Substantial Amount of Fuel or Energy | () | () | (X) | () |
| C. Encourages Growth Beyond Resource Capacities | () | () | (X) | () |
| D. Other: _____ | () | () | () | () |

Mitigation: A ____ B ____ C ____ D ____
() See attached exhibit(s): () Developer's Statement; () Agency Response _____
() See Special Environmental Considerations
() See Document in file _____

X. AGRICULTURAL/MINERAL RESOURCES

- | | | | | |
|--|-----|-----|-----|-----|
| A. Eliminates Valuable Mineral Resources | () | () | () | (X) |
| B. Prime Agricultural Soils | () | () | (X) | () |
| C. Conflicts with Existing Agricultural Area | () | () | () | (X) |
| D. Change from Agriculture to Other Uses | () | () | () | (X) |
| E. Other: _____ | () | () | () | () |

Mitigation: A ____ B ____ C ____ D ____
() See attached exhibit(s): () Developer's Statement; () Agency Response _____
() See Special Environmental Considerations
() See Document in file _____

XI. GROWTH INDUCING/CUMULATIVE EFFECTS

- | | | | | |
|--|-----|-----|-----|-----|
| A. Growth Inducing Effects | () | () | (X) | () |
| B. Precedent for Change in Area Land Use | () | () | (X) | () |
| C. Cumulative Effects: _____ | () | () | () | () |
| _____ | () | () | () | () |
| _____ | () | () | () | () |
| _____ | () | () | () | () |
| _____ | () | () | () | () |
| _____ | () | () | () | () |
| D. Other: _____ | () | () | () | () |

Mitigation: A ____ B ____ (School Fee, Countywide Fee) C ____ D ____
() See attached exhibit(s): () Developer's Statement; () Agency Response _____
() See Special Environmental Considerations
() See Document in file _____

3-43
2-30

**DEVELOPER'S STATEMENT FOR
DANA TRACT MAP
S980005T (TRACT 2299) ; ED98-110**

DATE: August 16, 1999

The applicant agrees to incorporate the following measures into the project. These measures become a part of the project description and therefore become a part of the record of action upon which the environmental determination is based. All development activity must occur in strict compliance with the following mitigation measures. These measures shall be perpetual and run with the land. These measures are binding on all successors in interest of the subject property.

Note: The items contained in the boxes labeled "Monitoring" describe the County procedures to be used to ensure compliance with the mitigation measures.

MAP CONDITIONS

The following mitigation measures address impacts that may occur as a result of the initial development of the project.

Archaeological Resources

1. If archaeological resources or human remains are accidentally discovered during grading or construction, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation shall be formulated and implemented.

Monitoring: Compliance will be verified by the Environmental Coordinator.

Air Quality

2. **During construction/ground disturbing activities**, the applicant shall implement the following particulate (dust) control measures. These measures shall be shown on the grading and building plans. In addition, the contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust off site. Their duties shall include holiday and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD prior to commencement of construction.
 - a. Reduce the amount of disturbed area where possible
 - b. Use water trucks or sprinkler systems in sufficient quantities to prevent airborne dust from leaving the site. Increased watering frequency will be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water should be used whenever possible.
 - c. All dirt stock pile areas should be sprayed daily as needed.
 - d. Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with a fast germinating native grass seed and watered until vegetation is established.

3-44

2-31

545

- e. All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- f. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site.
- g. All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with California Vehicle Code Section 23114.
- h. Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible.

Monitoring: All particulate (dust) mitigation measures will be shown on the grading and building plans. In addition, the contractor or builder shall designate a person or persons to implement the dust control program. Compliance will be verified by the APCD in consultation with the Department of Planning and Building.

Fire Safety

3. **Prior to final map approval**, the applicant shall submit a letter to the County Planning Department verifying that all fire safety improvements have been installed to the satisfaction of CDF, as outlined in the CDF letter, dated August 3, 1998.

Monitoring: Compliance shall be verified by the County Planning Department in consultation with the CDF.

4. **Prior to final map approval**, the applicant shall pay the water and sewer capacity fees, as required by the Nipomo Community Services District (NCSD). These fees must be paid prior to issuance of a will-serve letter from the NCSD.

Monitoring: Compliance shall be verified by the County Planning Department in consultation with the NCSD.

Noise Mitigation

5. **Prior to final map approval**, the applicant shall install a landscaped sound wall along Orchard Road to mitigate projected vehicular noise impacts. The final design and proposed location of the sound wall shall be reviewed and approved by both the County Planning Department and an acoustical engineer to assure that the wall mitigates vehicular noise as required in the County Noise Element.

Monitoring: Compliance shall be verified by the County Planning Department in consultation with the applicant's acoustical engineer.

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Drainage Improvements

6. Prior to final map approval, the applicant shall make all necessary drainage improvements to the satisfaction of County Engineering Department.

Monitoring: Compliance shall be verified by the County Engineering Department.

Visual Impacts

7. Prior to issuance of grading permits for tract map improvements, the applicant shall submit a landscaping plan that includes all details of landscape screening for the sound wall and drainage basin along Orchard Road.

Monitoring: Compliance shall be verified by the County Planning Department.

8. Prior to final map approval, the applicant shall install required landscaping, including landscaping to visually buffer the sound wall and drainage basin along Orchard Road, as well as ordinance required street landscaping along Orchard Road and Tanis Place.

Monitoring: Compliance shall be verified by the County Planning Department.

ADDITIONAL MAP SHEETArchaeological Resources

9. If archaeological resources or human remains are accidentally discovered during construction, work shall be halted within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, appropriate mitigation shall be formulated and implemented.

Monitoring: Compliance will be verified by the Environmental Coordinator.

The applicant understands that any changes made to the project subsequent to this environmental determination must be reviewed by the Environmental Coordinator and may require a new environmental determination for the project. By signing this agreement, the owner(s) agrees to and accepts the incorporation of the above measures into the proposed project description.

David Dava
Signature of Owner(s)

8-23-99
Date

DAVID DAVA
Name (Print)